Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1998

AGNES A. MANU
AND
STEPHEN FREMPONG-ATUAHENE

Petitioners,

v.

G.E. CAPITAL MORTGAGE SERVICES, INC.

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of The Commomwealth of Pennsylvania

PETITION FOR A WRIT OF CERTIORARI

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Pro Se Petitioners

63 pp

QUESTIONS PRESENTED

1. Whether or not state courts can institute procedures to unconstitutionally deprive pro se litigants a meaningful access to the courts without violating the First amendment to the United States Constitution.

2. Whether or not Pennsylvania Courts position that "when a party decides to act on his own behalf, he assumes the risk of his own lack of professional legal training" is not in conflict with this Court's long standing position as defined in *Haines v. Kerner*, 404 U.S. 519, 520 1972 and therefore unconstitutional or illegal.

LIST OF PARTIES

There are no parties who are not named in the caption.

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OPINIONS BELOW

The Honorable Sandra Mazer Moss in the Court of Common Pleas of Philadelphia County, First Judicial District of Commonwealth of Pennsylvania granted defendant's motion for summary judgment. A copy of that opinion, which was not reported is set forth in Appendix A.

An appeal was taken by the Plaintiff, and on July 11, 1997 a panel of the Superior Court of Pennsylvania affirmed the decision of the Court of Common Pleas of Philadelphia County. A copy of the panel's opinion, which was not reported, is submitted herein as Appendix B.

JURISDICTION

The judgment of the Supreme Court of the Commonwealth of Pennsylvania denying petition for allowance of an appeal was entered on May 28, 1998. Appellants application for extension of time to file petition for a writ of certiorari was granted on July 23, 1998 to October 25, 1998. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1) to review the judgment by writ of certiorari.

CONSTITUTIONAL, PROVISIONS, STATUTES AND REGULATIONS INVOLVED

1. The Fourteenth Amendment to the United States Constitution, Section 1, which provides, in pertinent part:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the united states; nor shall any State deprive any person of life, liberty or property without due

process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. The Fifth Amendment to the United States Constitution, which provides, in pertinent part:

No person shall be .... deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

3. The Seventh Amendment to the United States Constitution, which provides:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact trial by a jury, shall be other wise reexamined in any Court of the United States, than according to the rules of the common law.

4. This case turns on the Real Estate Settlement Procedure Act, RESPA, 12 U.S.C. secs. 2601 et seq., which is set forth in the Statutory Appendix.

STATEMENT OF CASE

Plaintiff Agnes Manu, commenced the instant civil action against Defendant, G.E. Capital Mortgage Services, Inc., by writ of summons in the Court of Common Pleas, Philadelphia County, in August 1994. Thereafter, Plaintiff filed a civil action complaint, to which Defendant, G.E. Capital Mortgage Services, Inc. filed an answer. Soon after, as a retaliatory measure Defendant filed Mortgage Foreclosure Action against Plaintiff.

The circumstances underlying Plaintiff's civil action are as follows. In August 1989, Plaintiff executed a mortgage note in the amount of two-hundred forty-four thousand ($244,000.00) dollars, secured by real property of the Plaintiff. Thereafter, the mortgage note was assigned to Defendant, G.E. Capital mortgage Services, Inc.

Plaintiff's complaint alleged that Defendant, G.E. Capital Mortgage Services, Inc., breached its contractual and statutory obligation as Plaintiff's mortgage lender by failing to account for Plaintiff's escrow account, and by submitting inaccurate and erroneous information to credit bureaus and credit reporting agencies concerning Plaintiff's mortgage with G.E. Capital Mortgage Services, Inc. As a result of these contractual breaches, and statutory violations, Plaintiff alleged that she suffered severe damage to her credit and business prospects, for which she sought damages from Defendant, G.E. Capital Mortgage Services, Inc. Defendant filed an answer to Plaintiff's complaint.

After waiting virtually two years since the date that the pro se Plaintiff first commenced her civil action, the Defendant corporation, on the eve of scheduled trial served Plaintiff with a voluminous set of interrogatories, request of production of documents, and a separate request of admissions. Plaintiff complied to Defendants discovery

within time and later filed a motion to amend her tentative answer, on the basis that the request for multitudinous admissions on the eve of trial was unfair and objectionable. Plaintiff had, herself, served Defendant with Discovery Requests, on February 6, 1996, to which Plaintiff received no response.

Therefore, Defendant, G.E. Capital Mortgage Services, Inc., submitted a Motion for Summary Judgment to the Court of Common Pleas, Philadelphia County. Plaintiff filed a timely response to that Motion, and on March 8, 1996 the Court of Common Pleas handed down an Order granting Defendant's motion for Summary Judgment. Plaintiff subsequently filed a Motion for Reconsideration with the lower court, and said Motion for Reconsideration was denied. Plaintiff, Agnes Manu appealed to Superior Court of Pennsylvania for relief from the lower court's Order granting Summary Judgment to Defendant, G.E. Capital Mortgage Services, Inc., and the Appellate Court affirmed the lower courts decision. Plaintiff's petition for allowance of an appeal to the Supreme Court of Pennsylvania was denied.

REASONS FOR GRANTING THE WRIT

I. THIS CASE PROVIDES A TIMELY OPPORTUNITY FOR THIS COURT TO ADDRESS THE UNCONSTITUTIONAL DEPRIVATION OF PRO SE LITIGANTS RIGHT OF ACCESS TO THE COURTS OF THIS NATION ESPECIALLY IN PENNSYLVANIA.

This case presents issues of great importance to the proper guidance and administration of justice to the ordinary man and woman who may have to go to court to seek justice and fairness in their daily life. The right of access to the courts is basic to our system of government, and it is well established today that it is one of the fundamental rights protected by the Constitution. *Ryland v. Sharpiro*, 708 F.2d 967 (5th Cir. 1983).

In *Chambers v. Baltimore Ohio Railroad*, 207 U.S. 142, 28 Ct 34, 52 L. Ed. 143 (1907), this Court characterized this right of access in the following terms:

> "The right to sue and defend in the courts is the alternative force. In an organized society it is the right conservative of all other rights and lies at the foundation of orderly government. A mere formal right of access to the courts does not pass constitutional muster. Courts have acquired that the access be 'adequate, effective, and meaningful'. *Bounds v. Smith*, 97 S. Ct. at 1495; see also *Rudolph v. Locke*, 954 F.2d at 1078."

In effect, it is clear that, under our constitution, the right of access to the courts is guaranteed and protected from unlawful

interference and deprivation by the state, and only compelling state interest will justify such intrusion.

Yet all across the nation Pro Se litigants are discriminated against every minute. In state courts across the nation Pro Se litigants complaints are summarily dismissed on mere technicalities at great disappointment of complainant. In Pennsylvania it is rare for Pro Se Plaintiff to survive either Motion to Dismiss or Motion for Summary Judgment. In this instant case, Pro Se appellant filed a civil action complaint for violation of contractual agreement and RESPA. Defendant, for two years did not initiate any discovery until the case was scheduled for trial conference. Just about thirty days to trial Defendant's attorney initiated discovery when Plaintiff/appellant was out of town. Pro Se Appellant had about ten days to respond and responded by general denial which according to the Pennsylvania Rules of Civil Procedure were admission. When appellant motioned the trial court to amend her general denials the State Court denied the motion stating:

> "Regarding Plaintiff's admissions, Pa R.C.P. 4014(b) requires a denial shall fairly meet the substance of the requested admission. Plaintiff's general denials fail this standard. While Plaintiff now moves to amend her answers pursuant to Rule 4014(d), said Motion filed on the eve of trial comes too late."

However, appellee's discovery was initiated at the eve of trial and the State Court found it convenient to extend time for appellee to file Motion for Summary Judgment but did not find same for appellant.

In the conclusion of State Courts opinion the Court stated:

> "While we empathize with the difficulties of pro se representation, ... We note 'when a party decides to act on his own behalf, he assumes the risk of his own lack of professional legal training." *Abraham Zion Corp., v. After Six, Inc.*, 414 Pa. Super 611, 619-620, 607 A.2d 1105, 1109, 1992, appeal denied, 533 Pa. 628, 621 A.2d 576 (1993) (citing, *Wiegand v. Wiegand*, 363 Pa. Super. 169, 172, 525 A.2d 772, 774 (1987).

This posture of the State Court denies pro se litigant access to the courts, especially in a state where judges are elected and most of the financing of the election comes from the legal community, especially lawyers. Furthermore, the Pennsylvania law is in direct conflict with this Courts position as enunciated in Haines with regard to pro se litigants. In this case, the Superior Court and the Court of Common Pleas of Philadelphia decided questions of law of major importance that are properly presented for review by this Court.

A. The Impact Of The Decision Below Justifies Review.

If the decision of the Pennsylvania courts is allowed to stand, consumers in Pennsylvania and especially pro se litigants will be denied their first amendment right of access to the courts. This will defeat the public policy objective of increasing the homeownership

to the middle and lower income all over the country. It will also illegally freeze pro se litigant access to the courts.

The federal statute in question which is the basis of this civil action is called RESPA, the Real Estate Settlement Procedures Act. 12 U.S.C. Sec. 2602. RESPA provides consumers with the right to dispute credit reports and credit information concerning mortgages, home equity loans, or loans secured by a residence. Under RESPA, if there is a credit dispute involving a home loan that falls within the provisions of RESPA, the consumer must communicate in writing to the creditor. This communication is called a "qualified written request", and must be a request to the lender to dispute an amount being sought, or seek information about an account. 12 U.S.C. sec. 2605(1). The qualified written request must be made on a separate piece of paper, not be mere notation on a billing statement returned to the lender. Id.

RESPA requires that during a period of sixty days from the receipt of a qualified written request the lender may not report any information about the amount in dispute on the qualified written request to a consumer reporting agency. 12 U.S.C. sec. 2605(e)(3). The lender is required, additionally, to respond in writing to the qualified written request within the sixty-day period, and must explain why the lender believes the billing is correct. 12 U.S.C. sec. 2605(e)(2).

In her complaint the Plaintiff/appellant contended that the lender violated this statute, RESPA statute, by reporting her account delinquent between December 1, 1991 to January 1, 1993 and then the summer of 1993, despite appellants various requests since 1990 and appellees written communication to her on May 19, 1993 that the problem had been corrected. As a basis for her complaint, the appellant contended that the lender/appellee apparently conceded

there was no arrearage, yet reported arrearages to Consumer Reporting Agency despite its prior response to the appellant's qualified request. Appellee initiated discovery on the eve of trial, obtained extension to file Motion for Summary Judgment and appellant sought the same benefit via Motion to Amend her Answers to Admission and was denied and appellees were awarded Summary Judgment dismissing appellants complaint.

Many consumers are confronted with problems with lenders but the only way to seek redress is to petition the government through Pro Se litigation and if this is taken away from them the foundation of our democracy is severally undermined.

Appellant respectfully submits that the case at hand presents and appropriate opportunity for this Court to provide guidance to the Pennsylvania courts to make access to its Courts more meaningful and for consumers and poor people across the country to have faith in the judicial system.

B. The Pennsylvania Rules Of Civil Procedure Are Unconstitutional And Discriminates Against Pro Se Litigant In Violation Of Their 5th And 14th Amendment Rights.

The 5th Amendment of the U.S. Constitution, in essence, states inter alia:

> "No person shall be deprived of life, liberty, or the property, without due process of law."

The 14th Amendment of U.S. Constitution also, in essence, states inter alia:

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty, or the property, without due process of law; or deny to any person within its jurisdiction the equal protection of the law."

The case law is also clear of the rights of appellant:

"Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda vs. Arizona*, 384, U.S. 436, 491.

"Pro Se Petitioners ... In determining whether such constitutional rights were denied we are governed by the substance of things, not the mere for." *Louisville N.R. Co. vs. Schmidt*, 177 U.S. 235 Ct 670.

First, Pro Se appellant/petitioner claims correspondence with appellee presents a factual dispute. Pursuant to Federal mandate, the Real Estate Settlement Procedures Act (RESPA) 12 U.S.C. § 2601-2605, petitioner is required to put in writing any escrow dispute request and appellee is required to respond within sixty (60) days and within that time appellee is legally prohibited to report any adverse credit to any reporting entity including credit bureaus and financial institution. Appellant/Petitioner notified appellee in October, 1990, and appellee did not respond until May, 1993, when it conceded at first that it had made an error and at the eve of trial it denied by affidavit that it had not. Appellee violated RESPA and appellant's procedural and substantive due process right. Appellee from October, 1990, to May, 1993 reported adverse credit to various credit bureaus

in violation of RESPA. Where there is a dispute of material fact summary judgment is not appropriate. Pa RCP 1035. Appellee's own conflicting position warranted a jury trial and the granting of summary judgment was a violation of appellant equal protection right.

Where rights secured by the constitution is involved, there can be no rule making or legislation which would abrogate them. *Miranda Supra*. The use of civil procedure, in this case Pennsylvania RCP 1035 and 4014, to deny pro se appellant her 7th amendment right of jury trial was an unconstitutional discrimination against "pro se black woman" appellant and violates her right of equal protection of 5th and 14th amendment to U.S. Constitution and relevant state mandates.

With all the foregoing, pro se appellant/petitioner submits that the issues raised here, the unconstitutionality of certain rules of procedures and the unconstitutional application of said procedures to pro se petitioner is a prima facie purposeful discrimination and violation of equal protection rights of petitioner. These violations of pro se litigants constitutional rights by the judicial process of the Commonwealth of Pennsylvania are issues of immediate public importance such as would justify this court's review.

C. Pennsylvania Rule Of Civil Procedure Rules 4014 And 1035 Were Unconstitutionally Applied To Pro Se Appellant/Petitioner In Violation Of Petitioner's 5th And 14th Amendment Rights Of Due Process And Equal Protection.

This action was initiated in August 1994, by a pro se litigant. The case was scheduled for trial on February 6, 1996. Appellee G.E. Capital Mortgage Services Inc., by and through their high priced

attorneys waited until thirty (30) days to the scheduled trial date to initiate discovery. On January 4, 1996, appellee sent to appellant thirteen paragraphs and five pages of Request for Admissions; and eleven pages of Request for Production of Documents and first set of interrogatories. These discovery materials were received by appellant on January 27, 1996, because pro se appellant was away on a business trip and kept for some time due to the weather. So pro se appellant had only ten days to respond.

Appellant quickly filed the necessary response and attended the hearing for trial. At the trial hearing appellee was given twenty (20) days to file a Motion for Summary Judgment, due on February 26, 1996, and appellant was given ten days to respond due on March 8, 1996, and the trial was rescheduled for March 11, 1996. Since the trial period was rescheduled pro se appellant filed request for production of documents and interrogatories on February 6, 1996. Also, appellant filed motion to amend her answers to appellants requested admissions. The lower court judge denied appellants motion to amend but granted appellees motion for summary judgment based essentially on the premises that the "denial shall fairly meet the substance of requested admission. Plaintiffs general denials fail this standard."

The Pennsylvania Rule of Civil Procedure 4014(c) states:

> "The party who has requested the admission may move to determine the sufficiency of the answer or objection. Unless the court determines that an objection is justified, it shall order that an answer be served. If the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an

> amended answer be served. This court may, in lieu of these orders, determine that final disposition of the request be made at a pre trial conference or at a designated time prior to trial."

In its position of the discovery issue stated above the lower court in its opinion stated: "We also find Plaintiff's explanation regarding the incomplete discovery unpersuasive. Specifically she complains the voluminous discovery served on the eve of trial was unfair and objectionable. While Plaintiff attempted to comply, Defendant sent said discovery to this pro se party when she was away from Philadelphia until January 27, 1996, only to return to bad weather which made her sick and hampered her ability to travel. Moreover, Plaintiff alleged Defendant failed to comply with Plaintiff's discovery set February 6, 1996.

While we empathized with the difficulties of pro se representation Defendant's discovery was hardly voluminous. We note when a party decides to act on his own behalf, he assumes the risk of his own lack of professional legal training."

The lower court did not comply with Pennsylvania RCP 4014(c) or at best unconstitutionally applied Pa RCP 4014 to pro se appellant. First, Pa. RCP 4014(c) in pertinent part states and I quote for emphasis that:

> "if the court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served".

Thus, appellant's motion to amend admissions was appropriate and denial amounts to denial of pro se appellant's right

of equal protection. Second, on the eve of trial appellee initiated a discovery for a case that had been pending for two years and the lower court did not find that unacceptable but when appellant filed her motion to amend, the court considered:

> "said motion filed on the eve of trial come too late".

Here again the court violates equal protection right of pro se appellant. Pro se appellant submits that the lower courts unconstitutional application of the Pa. RCP 4014 is a prima facie for purposeful discrimination under § 1983 equal protection allegation: Supreme Court of the United States established in *Washington v. Davis*, 426 U.S. 229 (1976) that:

> "the invidious equality of a law claimed to be racially discriminatory must ultimately be traced to be racially discriminatory purpose".

Purpose or intent to discriminate must be present before there is a violation of equal protection in a racial setting. The pro se appellant being a black homeowner establishes said intent. The Defendant is a white corporate entity and is represented by white attorney and the judge is a white judge.

On the Pa. RCP 1035 which governs summary judgment, there was a factual dispute of whether or not appellee violated the RESPA law and whether or not appellee violated appellants right of escrow reporting or whether or not appellant was injured. These were factual disputes should have gone before a jury. The courts decision granting summary judgment selectively and unconstitutionally applying Pa. RCP 1035 violated appellants 5th and 14th amendment rights.

With all the foregoing appellant submits that: The lower court has rendered, and the appellate court has confirmed, a decision in conflict with the decision of the other appellate courts or has so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of the power of supervision of the Supreme Court. The pro se appellant/petitioner submits that:

1. The decisions of the superior court in affirming the decision of Court of Common Pleas of Philadelphia County in denying Pro Se appellant her 7th amendment right to United State Constitution of jury trial violated the constitutionally guaranteed rights of 5th, 7th and 14th Amendment of the United States Constitution; and

2. The Rules of Civil Procedures and its implementation violates the constitutional rights of the appellant as defined in the 5th, 7th and 14th amendments.

The issues raised herein are questions of substance not previously determined by the Supreme Court and which undoubtedly affects majority of the people of this Nation. These violations of pro se litigants constitutional rights by the judicial process of the Commonwealth of Pennsylvania are issues of immediate public importance such as would justify review by this court.

Furthermore, the Superior Court affirmation of the lower court decision in this instant case is a decision not in accord with applicable decisions of the Supreme Court of the United States.

Lastly, the lower court has rendered, and the appellate court has affirmed, a decision in conflict with the decision of the other appellate courts or has so far departed from the accepted and usual

course of judicial proceedings as to call for an exercise of the power of supervision of the Supreme Court.

With all the foregoing, appellant/petitioner prays Supreme Court grant instant petition.

D. Pro Se Appellant's First Amendment Right Of Access To The Courts Was Denied By Pennsylvania Courts.

The right of access to the courts is basic to our system of government, and it is well established today that it is one of the fundamental rights protected by the Constitution. *Ryland v. Shaprio*, 708 F.2d 967 (5th Cir. 1983). In *Chambers v. Baltimore & Ohio Railroad*, 207 U.S. 142, 28 Ct. 34, 52 L. Ed. 143 (1907), the Supreme Court characterized this right of access in the following terms:

> "The right to sue and defend in the courts is the alternative force. In an organized society it is the right conservative of all other rights, an lies at the foundation of orderly government. It is one of the highest and most essential privileges of citizenship, and must be allowed by each state to the citizens of all other states to the precise extent that it is allowed to its own citizens equality of treatment in this respect is not left to depend upon comity between the states, but is granted and protected by the Federal Constitution." 207 U.S. at 148, 28 S. Ct. at 35 (citations omitted).

It is clear that the Court viewed the right of access to the courts as one of the privileges and immunities accorded citizens under article 4 of the Constitution and the fourteenth amendment.

In *California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 92 S. Ct. 609, 30 L. Ed.2d 642 (1972), the Supreme Court found in the first amendment a second constitutional basis for this right of access: "Certainly the right to petition extends to all departments of Government. The right of access to the courts is indeed but one aspect of the right of petition". Id 92 S. Ct. at 612.

This court recognized the first amendment right of access to the courts in *Wilson V. Thompson*, 593 F. 2d 1375 (5th Cir. 1979), where we stated: "It is by now well established that access to the courts is protected by the First Amendment right to petition for redress of grievance." *Id.* at 1387, See also *NAACP v. Button*, 371 U.S. 415, 83 S. Ct. 328, 336, 9 L. Ed. 2d 405 (1963); *Coastal States Marketing, Inc. v. Hunt*, 694 F.2d 1358, 1363 (5th Cir. 1983).

A number of other courts have also recognized that this right of access is encompassed by the first amendment right to petition. See *McCray v. Maryland*, 456 F. 2d 1, 6 (4th Cir. 1972); *Harris v. Pate*, 440 F.2d 315, 317 (7th Cir. 1971); *Pizzolato v. Perez*, 524 F. Supp. 1199, 1204 n. 10 (W.D. Pa. 1981).

A third constitutional basis for the right of access to the courts is found in the due process clause. In *Wolff v. McDonnell*, 418 U.S. 539, 94 S. Ct. 2963, 41 L. Ed.2d 935 (1974), the Supreme Court defined the right of access in a civil rights action under section 1983 in the following terms:

The right of access to the courts, upon which *Avery* [*Johnson v. Avery*, 393 U.S. 483, 89 S. Ct. 747, 21 L. Ed 2d 718 (1969)] was premised, is founded in the Due Process Clause and assures that no person will be denied the opportunity to present to the judiciary allegation concerning violations of fundamental constitutional rights.

It is futile to contend that the Civil Rights Act of 1871 has less importance in our constitutional scheme than does the Great Writ.

Id 94 S. Ct. at 2986. *See Also Mitchum v. Purvis*, 650 F.2d 647, 648 (5th Cir. 1981); *Rudolph v. Locke*, 594 F.2d 1976, 1978 (5th Cir. 1979). *See Bounds v. Smith*, 430 U.S. 817 97 S. Ct. 1491, 52 S. Ct. 780, 28 L. Ed.2d 113 (1971).

A mere formal right of access to the courts does not pass constitutional muster. Courts have required that the access be "adequate, effective, and meaningful." *Bounds v. Smith*, 97 S. Ct. at 1495; *see also Rudolph v. Locke*, 594 F.2d at 1078. Interference with the right of access to the courts gives rise to a claim for relief under section 1983. *Sigafus v. Brown*, 416 F.2d 105 (7th Cir. 1969) (destruction by jail guards of legal papers necessary for appeal supports claim for damages under § 1983); *McCray v. Maryland*, 456 F.2d at 6 ("Of what avail is it to the individual to arm him with a panoply of constitutional rights if, when he seeks to vindicate them, the courtroom can be hermetically sealed against his by a functionary who, by refusal or neglect, impedes the filing of his papers?"); *Crews v. Petrosky*, 509 F. Supp, at 1204 ("An allegation that a clerk of state court has negligently delayed the filing of a petition for appeal, and that the delay has interfered with an individuals right of access to the courts, may state a cause of action under 42 U.S.C. § 1983") (emphasis added). *See also Harris v. Pate*, 440 F.2d 315, 317 (7th Cir. 1971) (prison authorities may not place burdens on right of access to courts); *Corby v. Conboy*, 457 F.2d 251, 253 (2nd Cir. 1972)"

In conclusion, it is clear that, under our Constitution, the right of access to the courts is guaranteed and protected from unlawful interference and deprivations by the state, and only compelling state interest will justify such intrusions.

II. THE DECISION OF PENNSYLVANIA COURTS REGARDING PRO LITIGANTS CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT.

A. Pro Se Litigants Could Not Be Held To The Same Standard Of Procedural Requirements As Lawyers Without Violating Pro Se Litigants Constitutionally Protected Fourteenth Amendment Rights.

Pennsylvania courts assertion that pro se litigant "assumes the risk of his own lack of professional legal training conflicts with applicable decisions of this court. A clear ruling by the court at this time would promote the interests of justice for pro se litigants across the nation and particularly in Pennsylvania.

In *Hughes v. Rowe*, on pro se litigant this court stated: "It is settled law that the allegations of such a complaint, "however inartfully pleaded' are held " to less stringent standard than formal pleadings drafted by lawyers ..." *Haines v. Kerner*, 404 U.S. 519, 520 (1972). *See also Maclin V. Paulson*, 627 f.2d 83, 86 (Ca 7 1980); *French v. Heyne*, 547 F.2d 994, 996 (Ca 7 1976). An unrepresented litigant should not be punished for his failure to recognize subtle factual or legal deficiencies in his claims. In *Gallegos v. State of Louisiana Code of Criminal Procedures Art.*, 658 Paragraph A and C(4), 858, F.2d 1092 (5th Cir. 1988) the Fifth Circuit stated that "A pro se Plaintiff such as Gallegos should be accorded leniency and should be permitted to amend his pleadings when it is clear from his complaint that there is a potential ground for relief. *See Moawad v. Childs*, 673 F.2d 850, 851 (5th Cir. 1982). In this case Plaintiff sued for declaratory judgment as to constitutionality of Louisiana statute to which he was recommitted to state mental health facility. District Court dismissed the complaint but the Court of Appeals held that pro

se Plaintiff's failure to name any legal entity as Defendant in declaratory judgment action did not, without more, warrant dismissal of complaint. Gallegos is applicable to instant case and reaffirms the Courts leniency to pro se litigant. In Pennsylvania instead of such leniency the policy is that pro se litigant "assumes the risk of his own lack of professional legal training". In this instant case this is what Pennsylvania Court stated:

Regarding Plaintiff's admissions, Pa. R.C.P. 4014(b) requires a denial shall fairly meet the substance of the requested admission. Plaintiffs general denials fail this standard. While Plaintiff now moves to amend her answers pursuant to Rule 4014(d), said Motion filed on the eve of trial comes to late.

Additionally Plaintiff claims correspondence with Defendant supports a factual dispute. Specifically she argues the letters show there was no problem with her account in May, 1993, yet in August, 1993 Defendant sent Plaintiff a letter stating her account was delinquent. However neither letter is remotely probative of Plaintiff's allegations Defendant failed to explain escrow increases or negligently reported her credit status. While Plaintiff's October 1, 1991 letter requests an explanation of an "unreasonable" escrow increase, it provides an incomplete picture which again fails to enlighten us whether Defendant failed to offer an explanation. Finally Defendant's September 16, 1992 letter to Plaintiff simply documents an escrow dispute at the time but misses the substance of Plaintiff's claims.

We also find Plaintiff's explanation regarding the incomplete discovery unpersuasive. Specifically she complains the voluminous discovery served on the eve of trial was unfair and objectionable. While Plaintiff attempted to comply, Defendant sent said discovery to this pro se party when she was away from Philadelphia until

January 27, 1996 only to return to bad weather which made her sick and hampered her ability to travel.

While we empathize with the difficulties of pro se representation, Defendant's discovery was hardly voluminous. We note when a party decides to act on his own behalf, he assumes the risk of his own lack of professional legal training. *Abraham Zion Corp. v. After Six, Inc.*, 414 Pa. Super. 611, 619-620, 607 A.2d 1105, 1109 (1992), appeal denied, 533 Pa. 628, 621 A.2d 576 (1993) (Citing, *Wiegand v. Wiegand*, 363 Pa. Super. 169, 172, 525 A.2d 772, 774 (1987)."

If anything at all the State Courts analysis of the case indicated that there were issues of disputed facts and the proper process was to grant appellant's motion to amend her answer to the appellees discovery and allow discovery to be completed. Unfortunately, the State Court chose to selectively pick facts that favor appellee for no apparent legal reasoning but just to support her decision to grant summary judgment on pure technicality.

The Pennsylvania Court allowed appellee the chance to file a Motion for Summary Judgment when trial was scheduled for February 6, 1996 and appellee initiated discovery on January 4, 1996 but the court would not allow appellant to amend her answers and then granted a Motion for Summary Judgment to the detriment of appellant. This conflicts with the court settled standard and as such review is warranted.

B. Decision Of Pennsylvania Courts Regarding Pro Se Litigants Conflicts With This Courts Long Held View.

The framers of the U.S. Constitution envisaged that all people have access to the judicial system like the other branches of the government such as the legislative and the executive. That would mean that Pro Se petitioners should not be held to the standard required of the judicial system like attorneys:

> "A complaint may not be dismissed on motion if it states some sort of claim, baseless though it may prove to be drawn. This is particularly true where the Plaintiff is not represented by counsel. *Brooks, vs. Pennsylvania R. Co.*, 91F. Supp. 101 (DC, SD, NY, 1950.)"

Appellant, In Propria Person, is to held to less stringent standard in making his claim than that of formal officers of the court.

"Pro Se complaints, according to the Supreme Court, are held to less stringent standards than formal pleadings by lawyers and, regardless of who represents the Plaintiff, a motion to dismiss is not to be granted unless it appears beyond doubt that the Plaintiff can prove no set of acts which would entitle him to relief." *Haines v. Kerner*, 404 U.W. 519, 30L, Ed. 2d 652, 91A CT 594, 496 Reh. Den. 405 U.S. 948, 30, Ed. 2d 91B, 925 CT 963 (1972).

The Pennsylvania Rules of Civil Procedures number 4014 and 1035 are inconsistent with the Supreme Court of the United States decisions stated above and violates pro se petitioners constitutionally guaranteed 5th and 14th amendment right. Hence, appellant's rights

were violated by the lower court decision which was erroneously confirmed by the Superior Court.

With all the foregoing pro se appellant submits that the Superior Court affirmation of the lower court decision in this instant case is a decision not in accord with applicable decisions of the Supreme Court of Pennsylvania and/or the Supreme Court of the United States.

C. Because The Court Of Common Pleas Of Philadelphia County, Commonwealth of Pennsylvania Applied The Wrong Standard To Determine State Action, Its Holding Should Not Be Allowed To Stand.

This case was decided wrongly by the Court of Common Pleas of the County of Philadelphia, Commonwealth of Pennsylvania, not only because it used the wrong standard for pro se litigants as this Court has amply stated in its holding in *Haines v. Kernes*, Supra, and thereafter, but also because it used the wrong standard to determine "state action" – i.e., the violation of contractual relationship based on the mortgage note by Appellee.

The Court of Common Pleas of Philadelphia County failed to recognize that there were numerous issues of disputed material facts, and as such summary judgment was inappropriate and unwarranted. There was a factual dispute of whether or not appellee violated the RESPA law, whether or not appellee violated appellants right of escrow reporting and whether or not appellant was injured by appellees sending adverse credit reports that made it impossible for appellant to refinance her mortgage or obtain a loan for her businesses. The existence of such factual issues of material facts

made summary judgment inappropriate and conflicted with existing law.

The Court of Common Pleas relied on *Delate v. Kole*, et al, 667 A.2d 1218 (1995), where Plaintiff alleged willful misconduct by Defendants, zoning board members with bold assertion but "absolutely noting in the record, including the complaint, interrogatories, delate's deposition, and request for admissions, which would support such a conclusion". This case is completely different. In this case we have Pro Se Plaintiff who described with specificity Defendants violation of RESPA and the Mortgage Note and the Defendants acknowledgement of said violations and the conflicting statements of Defendants refuting previous acknowledgment. There was a material, factual dispute in this case unlike Delate, supra.

Unfortunately the Pennsylvania Courts have concluded that when litigants acts Pro Se they "assume the risk of lack of professional legal training". This deserves this Courts review.

SUMMARY OF REASONS FOR GRANTING THE WRIT

In summary, Appellant advances the following five reasons in support of her petition for a grant of certiorari in this case:

1. Unless and until this Court decrees otherwise, Pennsylvania Courts in particular will continue to indiscriminately deny Pro Se litigants access to the Courts and summarily dismiss their complaint with impunity. A mere formal right of access to the courts does not pass constitutional muster unless and until courts provide "adequate, effective and meaningful access".

2. This case presents in clear-cut and definitive form the principal question of how to insure Pro Se litigants access to the courts in a meaningful and effective manner to ensure the compliance of the First Amendment right to petition the government.

3. This case presents an opportunity for the development of flexible, workable and meaningful procedure to protect the rights of Pro Se litigants in this nation without burdening them with cumbersome legalistic process.

4. This case provides a timely opportunity for this court to address the unconstitutional deprivation of the constitutional rights of Pro Se litigants with regard to the 14th Amendment to the United States Constitution. The case presents issues of great importance to the proper guidance and administration of justice to the ordinary man and woman who seeks justice and fairness through the court system especially when judges are elected with the financial muscles of the legal profession.

5. This case also presents an opportunity for the court to review and address the problems of consumers vis a vis RESPA.

CONCLUSION

For the reasons given above, petitioner Agnes Manu, Pro Se appellant respectfully requests that a Writ of Certiorari issue to the Supreme Court of Pennsylvania.

Respectfully submitted,

/s/

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Pro Se Petitioners

STATUTORY APPENDIX
12 U.S.C. § 2601 ET SEQ.

§ 2601 Congressional findings and purpose

(a) The Congress finds that significant reforms in the real estate settlement process are needed to insure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country. The Congress also finds that it has been over two years since the Secretary of housing and Urban Development and the Administrator of Veterans' Affairs submitted their joint report to the Congress on "Mortgage Settlement Costs" and that the time has come for the recommendations for Federal legislative action made in that report to be implemented.

(b) It is the purpose of this chapter to effect certain changes in the settlement process for residential real estate that will result--

(1) in more effective advance disclosure to home buyers and sellers of settlement costs;

(2) in the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services;

(3) in a reduction in the amounts home buyers are required to place in escrow accounts established to insure the payment of real estate taxes and insurance; and

(4) in significant reform and modernization of local recordkeeping of land title information.

§ 2605. Servicing of mortgage loans and administration of escrow accounts

(a) Disclosure to applicant relating to assignment, sale, or transfer of loan servicing

(1) In general

Each person who makes a federally related mortgage loan shall disclose to each person who applies for any such loan, at the time of application for the loan--

(A) whether the servicing of any such loan may be assigned, sold, or transferred to any other person at any time while such loan is outstanding;

(B) at the choice of the person making a federally related mortgage loan--

(i) for each of the most recent 3 calendar years completed (at the time of such application), the percentage (rounded to the nearest quartile) of loans made by such person for which the servicing has been assigned, sold, or transferred as of the end of the most recent calendar year completed, except that--

(I) for any loan application during the 120 month period beginning on November 28, 1990, the information disclosed under this subparagraph may be for the most recent 2 calendar years completed; and

(II) this subparagraph may not be construed to require the inclusion, in the percentage disclosed, of any loans the servicing of

which has been assigned, sold, or transferred by the person making the loan to a transferee servicer that is an affiliate or subsidiary of such person; or

(ii) a statement that the person making the loan has previously assigned, sold, or transferred the servicing of federally related mortgage loans; and

(C) if the person who makes the loan does not engage in the servicing of any federally related mortgage loans, that there is a present intent on the part of such person (at the time of such application) to assign, sell, or transfer the servicing of such loan to another person.

(2) Model disclosure statements

Not later than 90 days after November 28, 1990, the Secretary shall develop a model disclosure statement for notification to applicants under paragraph (1) with respect to servicing procedures, transfer practices and requirements, and complaint resolution. The model statement shall provide for the person originating the loan to disclose their capacity to service loans and the best available estimate of the percentage of all loans made by such person for which the servicing will be assigned, sold, or transferred during the 12-month period beginning upon the origination. The estimate shall be expressed as one of the following range of possibilities--between 0 and 25 percent, between 26 and 50 percent, between 51 and 75 percent, or between 76 and 100 percent. This paragraph may not be construed to require the inclusion, in the estimate disclosed, of any loans the servicing of which will be assigned, sold, or transferred by the person originating the loan to a transferee servicer that is an affiliate or subsidiary of such person.

(3) Signature of applicant

Any disclosure of the information required under paragraph 91) shall not be effective for purposes of this section unless the disclosure is accompanied by a written statement, in such form as the Secretary shall develop before the expiration of the 90-day period beginning on November 28, 1990, that the applicant has red and understood the disclosure and that is evidenced by the signature of the applicant at the place where such statement appears in the application.

(b) Notice by transferor of loan servicing at time of transfer

(1) Notice requirement

Each servicer of any federally related mortgage loan shall notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan to any other person.

(2) Time of notice

(A) In general

Except as provided under subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not less than 15 days before the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) Exception of certain proceedings

The notice required under paragraph (1) shall be made to the borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan

(with respect to which such notice is made) in any case in which the assignment, sale, or transfer of servicing of the mortgage loan is preceded by--

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(C) Exception for notice provided at closing

The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) Contents of notice

The notice required under paragraph (1) shall include the following information:

(A) The effective date of transfer of the servicing described in such paragraph.

(B) The name, address, and toll-free or collect call telephone number of the transferee servicer.

(C) A toll-free or collect call telephone number for (i) an individual employed by the transferor servicer, or (ii) the department of the transferor servicer, that can be contacted by the borrower to answer inquiries related to the transfer of servicing.

(D) The name and toll-free or collect call telephone number for (i) an individual employed by the transferee servicer, or (ii) the department of the transferee servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.

(E) The date on which the transferor servicer who is servicing the mortgage loan before the assignment, sale, or transfer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments.

(F) Any information concerning the effect the transfer may have, if any, on the terms of or the continued availability of mortgage life or disability insurance or any other type of optional insurance and what action, if any, the borrower must take to maintain coverage.

(G) A statement that the assignment, sale, or transfer of the servicing of the mortgage loan does not affect any term or condition of the security instruments other than terms directly related to the servicing of such loan.

(c) Notice by transferee of loan servicing at time of transfer

(1) Notice requirement

Each transferee servicer to whom the servicing of any federally related mortgage loan is assigned, sold, or transferred shall notify the borrower of any such assignment, sale, or transfer.

(2) Time of notice

(A) In general

Except as provided in subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not more than 15 days after the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(b) Exception for certain proceedings

The notice required under paragraph (1) shall be made tot he borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan (with respect to which such notice is made) in any case in which the assignment, sale, or transfer of the servicing assignment, sale or transfer of the servicing of the mortgage loan is preceded by--

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(C) Exception for notice provided at closing

The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at

settlement (with respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) Contents of notice

Any notice required under paragraph (1) shall include the information described in subsection (b)(3) of this section.

(d) Treatment of loan payments during transfer period

During the 60-day period beginning on the effective date of transfer of the servicing of any federally related mortgage loan, a late fee may not be imposed on the borrower with respect to any payment on such loan and no such payment may be treated as late for any other purposes, if the payment is received by the transferor servicer (rather than the transferee servicer who should properly receive payment) before the due date applicable to such payment.

(e) Duty of loan servicer to respond to borrower inquiries

(1) Notice of receipt of inquiry

(A) In general

If any servicer of a federally related mortgage loan receives a qualified written request from the borrower (or any agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 20 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period.

(B) Qualified written request

For purposes of this subsection, a qualified written request shall be a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that--

(i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and

(ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

(2) Action with respect to inquiry

Not later than 60 days (excluding legal public holidays, Saturdays, and Sundays) after the receipt from any borrower of any qualified written request under paragraph (1) and, if applicable, before taking any action with respect to the inquiry of the borrower, the servicer shall--

(A) make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of such correction (which shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower);

(B) after conducting an investigation, provide the borrower with a written explanation or clarification that includes--

(i) to the extent applicable, a statement of the reasons for which the servicer believes the account of the borrower is correct as determined by the servicer; and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower; or

(C) after conducting an investigation, provide the borrower with a written explanation or clarification that includes--

(i) information requested by the borrower or an explanation of why the information requested is unavailable or cannot be obtained by the servicer; and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower.

(3) Protection of credit rating

During the 60-day period beginning on the date of the servicer's receipt from any borrower of a qualified written request relating to a dispute regarding the borrower's payments, a servicer may not provide information regarding any overdue payment, owed by such borrower and relating to such period or qualified written request, to any consumer reporting agency (as such term is defined under section 1681a of title 15).

(f) Damages and costs

Whoever fails to comply with any provision of this section shall be liable to the borrower for each such failure in the following amounts:

(1) Individuals

In the case of any action by an individual. an amount equal tot he sum of--

(A) any actual damages to the borrower as a result of the failure; and

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed $1,000.

(2) Class actions

In the case of a class action, an amount equal to the sum of--

(A) any actual damages to each of the borrowers in the class as a result of the failure; and

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not greater than $1,000 for each member of the class, except that the total amount of damages under this subparagraph in any class action may not exceed the lesser of--

(i) $500,000; or

(ii) 1 percent of the net worth of the server.

(3) Costs

In addition to the amounts under paragraph (1) or (2), in the case of any successful action under this section, the costs of the action,

together with any attorneys fees incurred in connection with such action as the court may determine to be reasonable under the circumstances.

(4) Nonliability

A transferor or transferee servicer shall not be liable under this subsection for any failure to comply with any requirement under this section if, within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before the commencement of an action under this subsection and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person other wise would have paid.

(g) Administration of escrow accounts

If the terms of any federally related mortgage loan require the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall make payments from the escrow account for such taxes, insurance premiums, and other charges in a timely manner as such payments become due.

(h) Preemption of conflicting State laws

Notwithstanding any provision of any law or regulation of any State, a person who makes a federally related mortgage loan or a servicer shall be considered to have complied with the provisions of any such State law or regulation requiring notice to a borrower at the time of

application for a loan or transfer of the servicing of a loan if such person or servicer complies with the requirements under this section regarding timing, content, and procedures for notification of the borrower.

(i) Definitions

For purposes of this section:

(1) Effective date transfer

The term "effective date of transfer" means the date on which the mortgage payment of a borrower is first due to the transferee servicer of a mortgage loan pursuant to the assignment, sale, or transfer of the servicing of the mortgage loan.

(2) Servicer

The term "servicer" means the person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan). The term does not include–

(A) the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, in connection with assets acquired, assigned, sold, or transferred pursuant to section 1823(c) of this title or as receiver or conservator of an insured depository institution; and

(B) the Government Nation Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation, in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by–

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(3) Servicing

The term "servicing" means receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts described in section 2609 of this title, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.

(j) Transition

(1) Originator liability

A person who makes a federally related mortgage loan shall not be liable to a borrower because of a failure of such person to comply with subsection (a) of this section with respect to an application for a loan made by the borrower before the regulations referred to in paragraph (3) take effect.

(2) Servicer liability

A servicer of a federally related mortgage loan shall not be liable to a borrower because of a failure of the servicer to perform any duty

under subsection (b), (c), (d), or (e) of this section that arises before the regulations referred to in paragraph (3) take effect.

(3) Regulations and effective date

The Secretary shall, by regulations that shall take effect not later than April 20, 1991, establish any requirements necessary to carry out this section. Such regulations shall include the model disclosure statement required under subsection (a)(2) of this section..

§ 2609. Limitation on requirement of advance deposits in escrow accounts

(a) In general

A lender, in connection with a federally related mortgage loan, may not require the borrower or prospective borrower--

(1) to deposit in any escrow account which may be established in connection with such loan for the purpose of assuring payment of taxes, insurance premiums, or other charges with respect to the property, in connection with the settlement, and aggregate sum (for such purpose) in excess of a sum that will be sufficient to pay such taxes, insurance premiums and other charges attributable to the period beginning on the last date on which each charge would have been paid under the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, and ending on the due date of its first full installment payment under the mortgage, plus one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve-month period; or

(2) to deposit in any such escrow account in any month beginning with the first full installment payment under the mortgage a sum (for the purpose of assuring payment of taxes, insurance premiums and other charges with respect to the property) in excess of the sum of (A) one-twelfth of the total amount of the estimated taxes, insurance premiums and other charges which are reasonably anticipated to be paid on dates during the ensuing twelve months which dates are in accordance with the normal lending practice of the lender and local custom, provided that the selection of each such date constitutes prudent lending practice, plus (B) such amount as is necessary to maintain an additional balance in such escrow account not to exceed one-sixth of the estimated total amount of such taxes, insurance premiums and other charges to be paid on dates, as provided above, during the ensuing twelve-month period; *provided, however,* That in the event the lender determines there will be or is a deficiency he shall not be prohibited from requiring additional monthly deposits in such escrow account to avoid or eliminate such deficiency.

(b) Notification of shortage in escrow account

If the terms of any federally related mortgage loan require the borrower to make payments to the servicer (as the term is defined in section 2605 (i) of this title) of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall notify the borrower not less than annually of any shortage of funds in the escrow account.

(c) Escrow account statements

(1) In initial statement

(A) In general

Any servicer that has established an escrow account in connection with a federally related mortgage loan shall submit to the borrower for which the escrow account has been established a statement clearly itemizing the estimated taxes, insurance premiums, and other charges that are reasonable anticipated to be paid from the escrow account during the first 12 months after the establishment of the account and the anticipated dates of such payments.

(B) Time of submission

The statement required under subparagraph (A) shall be submitted to the borrower at closing with respect to the property for which the mortgage loan is made or not later than the expiration of the 45-day period beginning on the date of the establishment of the escrow account.

(C) Initial statement at closing

Any servicer may submit the statement required under subparagraph (A) to the borrower at closing and may incorporate such statement in the uniform settlement statement required under section 2603 of this title. Not later than the expiration of 90-day period beginning on November 28, 1990, the Secretary shall issue regulations prescribing any charges necessary to the uniform settlement statement under section 2603 of this title that specify how the statement required under subparagraph (A) of this section shall be incorporated in the uniform settlement statement.

(2) Annual statement

(A) In general

Any servicer that has established or continued an escrow account in connection with a federally related mortgage loan shall submit to the borrower for which the escrow account has been established or continued a statement clearly itemizing, for each period described in subparagraph (B) (during which the servicer services the escrow account), the amount of the borrower's current monthly payment, the portion of the monthly payment being placed in the escrow account, the total amount paid into the escrow account during the period, the total amount paid out of the escrow account during the period for taxes, insurance premiums, and other charges (as separately identified), and the balance in the escrow account at the conclusion of the period.

(B) Time of submission

The statement required under subparagraph (A) shall be submitted to the borrower not less than once for each 12-month period, the first such period beginning on the first January 1st that occurs after November 28, 1990, and shall be submitted not more than 30 days after the conclusion of each such 1-year period.

(d) Penalties

(1) In general

In the case of each failure to submit a statement to a borrower as required under subsection (c) of this section, the Secretary shall assess to the lender or escrow servicer failing to submit the statement

a civil penalty of $50 for each such failure, but the total amount imposed on such lender or escrow servicer for all such failures during any 12-month period referred to in subsection (b)[1] of this section may not exceed $100,000.

(2) Intentional violations

If any failure to which paragraph (1) applies is due to intentional disregard of the requirement to submit the statement, then, with respect to such failure–

(A) the penalty imposed under paragraph (1) shall be $100; and

(B) in the case of any penalty determined under subparagraph (A) the $100,000 limitation under paragraph (1) shall not apply.

So in original. Probably should be subsection "(c)".

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

CIVIL TRIAL DIVISION

AGNES A. MANU,
Plaintiff,

v.

GE CAPITAL MORTGAGE SERVICES INC. f/k/a TRAVELERS MORTGAGE SERVICES, INC.,
DEFENDANT.

AUGUST TERM, 1994
NO. 4430

OPINION

SANDRA MAZER MOSS. J.
May 20, 1996

Defendant appeals our March 8, 1996 Order granting Defendant Summary Judgment. The record reveals the following facts and procedural history. In August, 1989 Plaintiff executed a mortgage note for $244,000.00 and thereafter entered into a mortgage assigned to Defendant. The real property subject to the mortgage is

located at 7000 Woodbine Avenue in Philadelphia, Pennsylvania. In October, 1994 Defendant filed a pending action in foreclosure in this Court at. October Term, 1994, No. 4430 after Plaintiff allegedly defaulted on said mortgage in May, 1994.

Plaintiff commenced the instant action in August, 1994 alleging from 1990 through the present, Defendant has refused to account for annual escrow increases violative of their contractual relationship and of state and federal law. Additionally Defendant allegedly provided incorrect and illegal information to unspecified financial institutions and credit bureaus Plaintiff's personal and business credit status.

In May, 1995 Defendant answered Plaintiff's Complaint and served its first set of Interrogatories, Requests for Production of Documents and Requests for Admissions on January 4, 1996. Plaintiff failed to serve any response to the Interrogatories and document requests; however Plaintiff belatedly answered by way of general denials Defendant's Requests for Admissions. (Attached as Exhibit G to Defendant's Motion for Summary Judgment). After Defendant filed its Motion for Summary Judgment, Plaintiff filed her Opposition and a Motion for Allowance to Amend her Answer to Defendant's Requests for Admissions.

Pennsylvania Rule of Civil Procedure 1035(b) directs Summary Judgment:

> shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Pa. R.C.P. 1035(b). See also, Samarin v. GAF Corp., 391 Pa. Super. 340, 401, 571 A.2d 398 (1989), *citing* Washington Federal Savings and Loan Association v. Stein, 357 Pa. Super. 286, 288, 515 A.2d 980, 981 (1986).

The Samarin Court commented "(i)t is not part of the court's function to decide issues of fact but solely to determine whether there is an issue of fact to be tried." Id. at 402. Therefore summary judgment should only be entered in those cases which are clear and free from doubt. Eckenrod v. GAF Corp., 375 Pa. Super. 187, 544 A.2d 50 (1988), *appeal denied*, 520 Pa. 605, 553 A.2d 968 (1988), *citing* Weiss v. Keystone Mack Sales Inc., 310 Pa. Super. 425, 456 A.2d 1009 (1983). Furthermore the evidence must be viewed in the light most favorable to the non-moving party and all doubts must be resolved against the moving party. Wallace v. Horvath, 283 Pa. Super. 179, 423 A.2d 1047 (1980); Acker v. Polena 260 Pa. Super. 214 393 A.2d 1230 (1978); Just v. Sons of Italy Hall, 240 Pa. Super. 416, 368 A.2d 308 (1976) (court must accept as true all well pleaded facts in Plaintiff's pleadings, and give Plaintiff the benefit of all reasonable inferences to be drawn therefrom).

We are persuaded by Pa. R.C.P. 1035(d) Summary Judgment was warranted. Said subsection states:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

Pa. R.C.P. 1035(d).

Here the pleadings, incomplete discovery responses and Plaintiff's admissions pursuant to Pa. R.C.P. 4014 fail to set forth specific facts showing there are genuine issues for trial. In Delate v. Kole et al., 667 A.2d 1218 (1995), Plaintiff alleged; willful misconduct by Defendants, zoning board ineinbers. Granting Summary Judgment in Defendant's favor, the Commonwealth Court found the record failed to support a willful misconduct claim. The Court stated:

> Apart from the bald assertions in Delate's complaint, there is absolutely nothing in the record, including the complaint, interrogatories, Delate's deposition, and requests for admissions, which would support such a conclusion. Since a plaintiff cannot survive a motion for summary judgment solely on the basis of conclusory allegations made in the complaint, we find summary judgment was properly entered against Delate. [citations omitted]. Id. at 1221.

As in Delate, supra, Plaintiff's sole evidence, correspondence with Defendant and her admissions, simply do not provide evidentiary support for the averments in her Complaint Defendant increased escrow payments without explanation and made incorrect reports to unspecified credit bureaus.

Regarding Plaintiff's admissions, Pa. R.C.P. 4014(b) requires a denial shall fairly meet the substance of the requested admission. Plaintiffs general denials fail this standard. While

Plaintiff now moves to amend her answers pursuant to Rule 4014(d),[2] said Motion filed on the eve of trial comes too late.

Additionally Plaintiff claims correspondence with Defendant supports a factual dispute. Specifically she argues the letters show there was no problem with her account in May, 1993, yet in August, 1993 Defendant sent Plaintiff a letter stating her account was delinquent. (Attached as Exhibit A & B to Plaintiff's Motion in Opposition). However neither letter is remotely probative of Plaintiff's allegations Defendant failed to explain escrow increases or negligently reported her credit status. While Plaintiff's October 1, 1991 letter explanation of an "unreasonable" escrow increase, it provides an incomplete picture which again fails to enlighten us whether Defendant failed to offer an explanation. (See, October 1, 1991 letter, attached as Exhibit C). Finally Defendant's September 16, 1992 letter to Plaintiff simply documents an escrow dispute at that time but misses the substance of Plaintiff's claims.[3]

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2 Pa. R.C.P. 4014(b) permits withdrawal of admissions if the merits of the action will be thereby presented and there is no prejudice to the opposing party.

3 In contrast, Defendant attaches its Quality Control Management Underwriter's Affidavit (Attached as Exhibit E to Defendant's Motion for Summary Judgment) which sets forth all escrow increases (following increases in taxes or insurance, or because of missed payments) were made in conformance with all laws and the mortgage contract.

We also find Plaintiff's explanation regarding the incomplete discovery unpersuasive. Specifically she complains the voluminous discovery served on the eve of trial was unfair and objectionable. While Plaintiff attempted to comply, Defendant sent said discovery to this *pro se* party when she was away from Philadelphia until January 27, 1996 only to return to bad weather which made her sick and hampered her ability to travel.[4]

While we empathize with the difficulties of *pro se* representation, Defendant's discovery was hardly voluminous. We note "[w]hen a party decides to act on his own behalf, he assumes the risk of his own lack of professional legal training." Abraham Zion Corp. v. After Six, Inc. 414 Pa. Super. 611, 619-620, 607 A.2d 1105, 1109 (1992), appeal denied, 533 Pa. 628, 621 A.2d 576 (1993) (citing, Wiegand v. Wiegand, 363 Pa. Super. 169, 172, 525 A.2d 772, 774 (1987).

For the foregoing reasons we properly granted Summary Judgment.

BY THE COURT:

Sandra Mazer Moss, J.

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4 Moreover Plaintiff alleged Defendant failed to comply with Plaintiff's discovery sent February 6, 1996.

J. A24014/97

AGNES A. MANU, Appellant

v.

G. E. CAPITAL MORTGAGE SERVICES INC.

No. 01288 Philadelphia, 1996

IN THE SUPERIOR COURT OF PENNSYLVANIA

Appeal from the Order Dated March 11, 1996 Docketed March 12, 1996, in the Court of Common Pleas of Philadelphia County, Civil Division, at No. AUGUST TERM, 1994 No. 4430.

BEFORE:BECK, TAMILIA & HESTER, JJ.

MEMORANDUM:

Pro se appellant Agnes A. Manu appeals from the March 11, 1996 order granting summary judgment to G.E. Capital Mortgage Services Inc., appellee. We affirm.

Proceeding pro se, appellant instituted this action in August, 1994, against appellee, the mortgagee under a mortgage which appellant executed in August,1989, for the principal amount of $244,000. The real property subject to the mortgage is appellant's residence at 7000 Woodbine Avenue, Philadelphia. In

October, 1994, appellee instituted a mortgage foreclosure action in which it indicated that appellant's last mortgage payment was made three months prior to institution of this action.

In the complaint, appellant alleged that beginning in 1990, appellee had refused to account for annual escrow increases in violation of their contract, state law, and federal law. She also averred that appellee had provided incorrect and illegal information to unspecified financial institutions and credit bureaus regarding her credit status.

Appellee instituted discovery proceedings, but appellant has failed to answer interrogatories and filed a general denial to appellee's request for admissions. Accordingly,appellee moved for summary judgment, which was granted by the trial court on March 11, 1996. This appeal followed.

Following an examination of the record and applicable law, we conclude that the issues raised in this appeal were thoroughly and correctly disposed of by the trial court in its well-reasoned opinion dated May 20, 1996. Accordingly, we affirm based on that opinion.

Order affirmed.